

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	
Petition of Bell Atlantic for Relief	)	CC Docket No. 98-11
from Barriers to Deployment of	)	
Advanced Telecommunications Services	)	
	)	
Petition of U S WEST for Relief from	)	
Barriers to Deployment of Advanced	)	CC Docket No. 98-26
Telecommunications Services	)	
	)	
Petition of Ameritech for Relief from	)	
Barriers to Deployment of Advanced	)	CC Docket No. 98-32
Telecommunications Services	)	
	)	
Motion to Consolidate Filing of	)	
Comments and Replies by the	)	DA No. 98-513
Association for Local	)	
Telecommunications Services	)	

**COMMENTS OF THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN (PSCW) AND THE  
INDIANA UTILITY REGULATORY COMMISSION (IURC)**

On January 26, February 25, and March 5, 1998, Bell Atlantic Corporation, U S WEST Communications, Inc., and Ameritech Corporation, respectively, filed petitions ("the § 706 Petitions") with the Federal Communications Commission (Commission) seeking forbearance from certain provisions of the Communications Act of 1934 (Act), as amended, that the petitioners contend act as barriers to the deployment of advanced telecommunications services.

The three petitioners all rely on § 706 of the Telecommunications Act of 1996 as the basis for their request for forbearance from, among others, §§ 251 and 271 of the Act. The Common Carrier Bureau (CCB) originally issued separate public notices establishing pleading cycles for those petitions. On March 16, 1998, the CCB issued an order consolidating comment on the three petitions. The PSCW and IURC file these comments regarding the Ameritech petition although, as indicated in the consolidation order, the points will have relevance to the Commission's decisions on each of those § 706 petitions.

### **Issuance of a Notice of Inquiry (NOI) is the Appropriate Action under § 706**

The CCB declined to consolidate the pleading cycle for these petitions with the pleading cycle on the APT petition. We agree that the petition filed by the Alliance for Public Technology (APT), unlike those of Bell Atlantic, U S WEST and Ameritech, addresses the regulatory concerns of more than "just an individual company." As the APT petition requests a rulemaking, it is not appropriate to consolidate its pleadings with the pleadings regarding those of individual RBOCs petitioning seeking forbearance from certain provisions of the Act. It is our opinion that the APT petition requests a more appropriate vehicle to address the concerns raised in the other three § 706 Petitions, however, it still puts the cart before the horse as shown by the clear language of § 706 (emphasis added) as follows:

#### **SEC. 706. ADVANCED TELECOMMUNICATIONS INCENTIVES.**

##### **(a) In General.**

**The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans** (including, in particular, elementary and secondary schools and classrooms) by utilizing, **in a manner consistent with the public interest, convenience, and necessity**, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

##### **(b) Inquiry.**

**The Commission shall, within 30 months after the date of enactment of this Act, and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans** (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, **the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action** to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

The PSCW and IURC caution, that § 706 calls for the Commission to first issue a Notice of Inquiry (NOI), not a Notice of Proposed Rulemaking (NPRM), and none of the petitions raise concerns of such urgency or gravity that the statutory directive should be circumvented.

### **Section 706 Envisions a Joint State and Federal Responsibility**

InterLATA advanced telecommunications services consist of both inter and intrastate services. In an investigation under the NOI required in § 706, the Commission should take note of each State commission's actions to encourage infrastructure investment under the Act. The Commission should take action, under § 706, to accelerate deployment of advanced telecommunications capability only if after such an investigation it finds that such capability is not being deployed to all Americans in a reasonable and timely fashion despite its and the States efforts to promote its deployment under the Act and State law.

The PSCW and IURC believe the Act calls for, and the PSCW and IURC look forward to, State/Federal cooperation in the effort to achieve the goals of the 1996 Act for advanced telecommunications capabilities. This is in contrast to the hasty and seemingly self-serving remedies put forth in the § 706 Petitions. Further, the PSCW and IURC posit that § 706 also gives directive to consider all of the goals of the Act, and not just the advanced services in isolation, when it conditions the means of encouraging advanced infrastructure deployment with "in a manner consistent with the public interest, convenience and necessity." This prompts the PSCW and IURC to note to the Commission the areas where Ameritech's § 706 petition raises possible preemption and jurisdictional issues and potential conflicts with other sections of the Act.

### **The § 706 Petitions Pose Possible Preemption and Jurisdictional Issues**

- Ameritech's requested remedies, if granted, could tie the State Commissions' hands in arbitrating interconnection agreements and in applying certain State requirements to interconnection.
- Ameritech requested modification to the separate subsidiary requirements of § 272 that would affect the scope of State proceedings to certify Ameritech Communications, Inc.
- Ameritech's petition contemplates Commission preemptive action to remove § 271 interLATA service prohibitions, which if granted, would in effect "bypass" the requirement that individual States be consulted prior to approving a § 271 interLATA application for advanced/broadband services.

## **The § 706 Petitions Pose Possible Conflicts With Other Sections of the Act**

- Ameritech's petition, if granted, raises several § 254(k) cost allocation, subsidy and cost recovery issues that must be addressed or anti-competitive pricing or cost shifting may occur.
- Ameritech's petition offers no proposal for assuring the reasonable comparability of access to and pricing of advanced telecommunications services in the rural, insular and high cost areas which are responsibilities of the Universal Service Joint Board and the Commission under § 254(b)(3) of the Act.

## **The Proper Relationship of Advanced Services and Essential or Basic Services for Universal Service Purposes is Not Yet Established**

The petitioning RBOCs want to segregate their offerings of various digital loops and high speed data services from their voice-grade offerings. Yet the Commission is still addressing the bandwidth requirements for voice grade offerings. These bandwidth requirements could have a significant impact on the level of Internet congestion on the local network.

The PSCW has investigated the relationship of the advanced service offerings to the essential services in its Universal Service rulemaking and in its docket regarding Ameritech's petition for authority to operate the advanced services under a separate subsidiary, Ameritech Advanced Data Services of Wisconsin, Inc.(AADS-WI). The PSCW has had for two years, administrative rules that address the roll out of advanced services. Although the other four Ameritech states authorized AADS, the PSCW denied such authorization for the AADS-WI subsidiary.<sup>1</sup> This denial was in large part because, while the advanced data services offerings were identifiable, the same network technology was being and continues to be, placed by LECs to carry integrated voice and data network traffic.<sup>2</sup>

It is essential that federal and state regulators understand the relationship of essential and advanced services offerings and consider the options for reasonable and compatible universal service goals and policies for them before embarking on any specific alternative regulatory fixes to encourage deployment of advanced services. FCC regulatory actions that would artificially separate voice and data network offerings may unjustifiably interfere with the evolution of the Public Switched Network (PSN) to the detriment of universal service and pro-competitive objectives.

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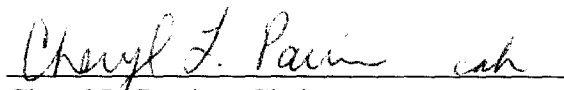
<sup>1</sup> The IURC takes no position regarding AADS-WI as it has already granted AADS of Indiana, Inc., a Certificate of Territorial Authority.

<sup>2</sup> The PSCW's denial of AADS-WI's request for authorization has been appealed by Ameritech under § 253(a) of the Act and the court decision is expected shortly.

## **Action on Any of the Petitions is Premature Without an NOI**

Clearly, given the concerns expressed above, which are illustrative and by no means exhaustive, Commission action to grant any of the individual § 706 petitions is not advisable at this time. What is needed is a thorough investigation and documentation of the problems alleged in the petitions under the procedurally required NOI. That investigation should involve State participation and state-by-state consideration. Assuming that the problems can be substantiated, any remedies should be weighed with consideration for their effects on other goals of the act and consideration of State authority under the Act.

Respectfully Submitted,

Handwritten signature of Cheryl L. Parrino in cursive, followed by the initials "csh".

Cheryl L. Parrino, Chairman  
Public Service Commission of Wisconsin  
P.O. Box 7854  
Madison, WI 53707-7854

Handwritten signature of G. Richard Klein in cursive, followed by the initials "csh".

G. Richard Klein, Commissioner [for the]  
Indiana Utility Regulatory Commission  
302 W. Washington, Suite E-306  
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Dated at Madison, WI  
April 3, 1998.

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